IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 2736 of 2006()

CC.903/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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PETITIONER: ACCUSED:

PRASAD, PROPRIETOR, PRASAD ENTERPRISES
40/6816 H, FIRST FLOOR, CONVENT ROAD,
KOCHI-35.

BY ADV. SRI.TOMY SEBASTIAN

RESPONDENTS: STATE & COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. M/S. ANKITA ELECTRONICS PVT.LTD.
NO.39/4212 A, RAVIPURAM ROAD,
VALANJAMBALAM, KOCHI-16.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB.
SRI.K.D.PAUL DALIN
SRI.P.A.AUGUSTINE(AREEKATTEL)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 2736 OF 2006

Dated this the 8th day of December, 2006

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the N.I. Act. The 2nd respondent is the complainant and the complainant is a Private Limited Company. The trial has already commenced. The matter is remaining at the stage of defence evidence. The petitioner has filed an application to summon the witness employed by the complainant/company to appear, to produce certain documents and to give evidence. By the impugned order which I extract below, the learned Magistrate has dismissed the application:

> "The witness cited in this schedule is the part and parcel of the complainant. None of the provision enables to issue summons to the party in proceeding as witness. Hence it is rejected."

2. The learned counsel for the rival contestants have been heard. The complainant is a Company. The witness sought to be summoned is an officer of the company. I find

absolutely nothing, in law, which can stand in the way of the petitioner summoning an official of the company for production of certain documents. No provision of law has been brought to my notice which would disentitle the accused to pray for issue of summons to an officer of the complainant/company to appear and to give evidence. Sec.254(2) certainly permits the summoning of witnesses for the defence. The complainant - company in law is a different legal personality and cannot be equated to the complainant. The impugned order does, in these circumstances, warrant interference. The reason shown is not sufficient. The learned Magistrate shall consider the application afresh on merits and pass appropriate orders.

3. In the result, this Crl.M.C. is allowed to the above extent.

4. Hand over a copy of this order to the learned counsel for the petitioner.

(R. BASANT, JUDGE)

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